



NATIONAL CONGRESS OF AMERICAN INDIANS

January 23, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: NCAI COMMENTS IN THE MATTER OF APPLICATION FILED IN THE
TRANSFER OF CONTROL OF LEVEL 3 COMMUNICATIONS, INC. TO
CENTURYLINK, INC., WC DOCKET NO. 16-403**

Dear Secretary Dortch,

On behalf of the National Congress of American Indians (NCAI), the oldest and largest representative organization of American Indian and Alaska Native tribal governments, I respectfully submit these comments on the above-referenced application for transfer of control of Level 3 Communications, Inc. to CenturyLink, Inc (“Merger Applicants”). NCAI urges the Commission to exercise its authority under the public interest standard of review to address the lack of access to affordable, modern broadband service on Tribal lands.¹ A considerable amount of Indian Country and unserved tribal lands is within the territory of CenturyLink. The Commission should recognize the unique opportunity this merger presents to address the persistent lack of access to affordable, IP-based broadband on Tribal lands, for both governmental, educational, medical, enterprise and residential consumers. In addition, the Commission should take steps to deter the lessening of investment in networks serving Tribal lands that will likely occur as a result of this merger. Tribal Engagement and consultation are key tools that should be used by CenturyLink and the Commission to explore how to address the issues raised by this merger may positively impact the availability of affordable, IP-based broadband service to Indian Country.

TRIBAL GOVERNMENTS AND OTHER ENTERPRISE CUSTOMERS ON TRIBAL LANDS SHOULD HAVE BETTER ACCESS TO BROADBAND SERVICES

In their application, the merging entities discuss the benefits their merger would provide citing opportunities to leverage their combined efforts in a competitive market.² The Merger Applicants focus on opportunities in metropolitan areas, international opportunities and with multi-location enterprise customers. What is noticeably missing, particularly given the breadth of the 14 state area served by CenturyLink, is a discussion of how the merger may benefit enterprise customers in Tribal areas CenturyLink serves and where CenturyLink is the carrier of last resort.

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¹ 47 U.S.C. §§ 241(a), 310(d).

² Consolidated Application to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 16-403, at B-8 - B-11 (*citing* their ability to better compete with larger incumbent carriers, cable companies and foreign competitors) (filed Dec. 12, 2016) (CenturyLink Merger Application).

The Merger Applicants do not appear to be focused on opportunities to establish or upgrade networks in their unserved and underserved Tribal communities.³

As enterprise customers, Tribal governments and the businesses, government, education and medical institutions located on Tribal lands are deserving of better access to broadband services, as they are striving to promote economic development and educational opportunities in their communities. In many instances, however, these Tribal lands are connected by 20th century technologies that have not been upgraded to offer access to broadband service and certainly not the robust broadband that is being promised by the Merger Applicants for business services post-merger and certainly not at affordable prices. This is particularly true in the CenturyLink 14 state territory, which has a long history of failing to provide service or providing it over inadequate and outdated facilities at exceedingly expensive prices.⁴ For example, the Makah Tribe, which is an enterprise customer of CenturyLink in Washington State, is unable to receive connectivity beyond a T-1 (1.544 Mbps) and that T-1 (which is a “TDM” or Time Division Multiplexing technology from the 1970’s) is offered to the Tribe for approximately \$2800 per month.⁵ Other examples across CenturyLink’s 14 state territory exist where inadequate facilities and services are offered for prices that are well above the current price for such services in urban and even non-Tribal rural areas.

For the governments, educational, medical and businesses that serve Tribal residents, it is important for the Commission to consider the economic harm caused by a lack of broadband connectivity, affordably available using IP-based technology and address those harms in the context of this merger.

THE MERGER WILL LIKELY LESSEN THE INCENTIVE TO INVEST IN NETWORK FACILITIES SERVING TRIBAL LANDS AND DETER COMPETITIVE ENTRY

As has been well-documented by the Commission, Tribal lands remain the least-served areas in the nation, with 68 percent of Americans living on Tribal lands in rural areas lacking access.⁶

Many Native Americans reside in CenturyLink’s 14-state service territory which is home to the largest land-based, federally recognized tribal lands in the country. This merger risks lessening the incentive CenturyLink has to invest in their networks that serve Tribal lands and the residential, governmental, educational, medical and enterprise on those Tribal lands, as the merged entity shifts its business model to one focused on enterprise business services.⁷ As

³ *Id.* at B-20.

⁴ CenturyLink’s acquisition of Qwest and Qwest’s acquisition of US West are the lineage of poor service to Tribal lands.

⁵ Networks, like CenturyLink’s, that rely on older technologies are more expensive to maintain than IP-based networks and limit a carrier’s ability to expand network capabilities.

⁶ [Broadband Progress Report](#) at 34.

⁷ CenturyLink Merger Application at B-2 (“The Transaction will enable the Applicants to combine these complementary businesses to become a more effective competitor in the provision of enterprise services — an area that is growing and evolving due to increased bandwidth needs.”).

CenturyLink notes in its application, 76 percent of the post-merger company's revenues will be derived from business customers, and 65 percent of the combined company's core revenues will be from strategic services.⁸

As to those areas where broadband is lacking, the application states only that existing regulatory obligations and commitments will be maintained.⁹ This stands in stark contrast to the merger application filed by CenturyLink in its acquisition of Qwest. In that application, CenturyLink assured the Commission that it was a company that was "committed to universal broadband deployment."¹⁰ It noted that the transaction would strengthen its balance sheet and improve the sustainability of network investments made in the affected regions leading to "a more rapid deployment of broadband access and advanced broadband capabilities."¹¹ While some of those benefits may have flowed to parts of CenturyLink's service territory, it did not make it to the Tribal areas of the affected regions within the 14 state CenturyLink service territory.

It is critical that the Commission consider how best to ensure that businesses, government and educational institutions, along with medical facilities and residents of Tribal lands in the CenturyLink 14-state service territory are provided affordable, modern technology based broadband access. To the extent that CenturyLink does not wish to make the investments necessary to extend broadband access to Tribal lands in its 14 state territory, NCAI urges the Commission to take steps, in the context of this merger, to ensure those anchor institutions, businesses and residents are provided a clear path or network development plan to affordable, IP-based technology broadband access.

THE COMMISSION SHOULD ENGAGE IN TRIBAL CONSULTATION TO DISCUSS STEPS TO ENSURE GREATER TRIBAL BROADBAND ACCESS IS PROMOTED AS A BENEFIT OF THIS MERGER

Proactive Tribal consultation by the Commission and Tribal Engagement by the parties would be a constructive means of initiating a dialogue between the affected Tribal areas and CenturyLink on ways to address the concerns of Tribal governments, educational, medical, residential and businesses in their service area. NCAI has been a strong advocate of such engagements and believes that the Commission has an opportunity in this merger to help facilitate a dialogue that can address some of the concerns this merger raises, as identified in this comment. NCAI believes there is a path forward for this merger and appreciates the desire of the merging entities to become a stronger competitor, but we also believe that the Commission has a public interest obligation to address these and other access concerns that the merger presents.

If you have any questions please contact me at jpata@ncai.org or my colleague Maria Givens, Policy Analyst, at mgivens@ncai.org.

⁸ *Id.* at B-14.

⁹ *Id.* at B-20.

¹⁰ Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended, at 20 (filed May 10, 2010).

¹¹ *Id.* at 21.

A handwritten signature in black ink, reading "Jacqueline Pata". The script is fluid and cursive, with the first name and last name clearly distinguishable.

Jaqueline Pata
Executive Director
National Congress of American Indians